IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 223-M of 2005 (O&M)

Date of Decision: 14.10.2014

Dalbir Kashyap

....Appellant.

Versus

Harmeet @ Ravinder

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: Mr. Gurmeet Singh, Advocate for the appellant.

Mr. H.S. Kahlon, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. The instant appeal has been filed by the appellant-husband challenging the judgment and decree dated 13.6.2005 passed by the Additional District Judge (Adhoc), Jalandhar whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree of divorce filed by him, was dismissed.

2. Put shortly, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. The marriage of the parties was solemnized in July 1975 as per Hindu rites and ceremonies. After the marriage, the parties lived as husband and wife and cohabited as such. Out of the said wedlock, three children, namely, Mukesh Kashyap, Kumar Kashyap (sons) and Rashmi (daughter) were born.

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Rashmi died on 20.11.1997 and the sons are living with the appellant at Jalandhar. According to the appellant, the respondent was a lady of quarrelsome nature and started quarrelling on trifling matters. She created scene off and on and used to abuse the appellant, his children and other relatives. She had been maltreating the appellant and his children physically and mentally. Accordingly, the appellant filed a petition under Section 13 of the Act for dissolution of marriage by passing a decree of divorce. The said petition was contested by the respondent by filing a written statement. Various preliminary objections were raised in the written statement. However, the averments made in the petition were denied and a prayer for dismissal of the same was made. The appellant filed replication controverting the averments made in the written statement. From the pleadings of the parties, the core issue that arose for adjudication before the trial court was, whether the respondent had treated the husband-petitioner with cruelty.

3. The trial court on appreciation of the evidence led by the parties came to the conclusion that no convincing evidence was produced to prove that the respondent had ever treated the appellant with cruelty or that she had deserted him and decided both the issues in favour of the respondent. Accordingly, the trial court vide judgment and decree dated 13.6.2005 dismissed the divorce petition. Hence, the present appeal.

4. Learned counsel for the appellant submitted that PW4 Mukesh Kashyap son of the parties had clearly deposed about the nature and behaviour of his mother-respondent. It was urged that the trial court has not given any legal reasons for discarding the statement of the said witness. Ordinarily, the son would not depose against his

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mother unless there was truth in the allegations.

5. On the other hand, learned counsel for the respondent-wife supported the judgment and decree passed by the trial court dismissing the divorce petition.

6. After hearing learned counsel for the parties, we find merit in the submissions made by the learned counsel for the appellant. PW4-Mukesh Kashyap has stated that the respondent was a lady of quarrelsome nature and used to quarrel on trifling matters. She abused the appellant and him (Mukesh Kashyap) along with his brother and grandmother without any cause or reason. He further deposed that the acts and conduct of the respondents towards him, his father (the appellant) and grandmother had been very cruel and she had been maltreating them physically and mentally. Further, the respondent herself was guilty and responsible for the unnatural and untimely death of her daughter Rashmi and she even did not attend her kirya ceremony which took place on 30.11.1987. PW4 also deposed that the letters, Ex.PC and Ex.PE were written by his deceased sister whereas letter Ex.PD was written by him to the appellant and also recognized the handwritings. According to PW4, he and his brother used to cook food, meals, tea etc. and to clean utensils but the respondent never cared for them and their well being during her stay in the matrimonial home. The respondent along with her associates criminally trespassed into the house of the appellant by breaking open the lock on 22.5.1999 and forcibly occupied the portion of the said house at the time when they were not present in the house. The appellant appearing as PW1 had supported the evidence by alleging that the respondent had been maltreating him and his children physically and mentally. Further, the

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children of the appellant had written letters to him with regard to the maltreatment and torture as well as cruel behaviour of the respondent towards them. According to the appellant, the respondent had also deserted him due to her illegal acts and conducts. The trial court without assigning any cogent and convincing reasons has not relied upon the statement of son-Mukesh Kashyap. The statement of PW4 read with other evidence clearly demonstrates that the respondent-wife had treated the appellant with cruelty.

7. In view of the above, the cruelty as alleged by the appellant stands proved. The trial court was in error in recording a finding to the contrary. Consequently, the appeal is allowed and the judgment and decree dated 13.6.2005 passed by the trial court is set aside. A decree of divorce is passed in favour of the appellant.

(AJAY KUMAR MITTAL)
JUDGE

October 14, 2014
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(RAJ RAHUL GARG)
JUDGE

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